



RECEIVED

2004 FEB -6 PM 4:25

TRA DOCKET ROOM
February 6, 2004

BellSouth Telecommunications, Inc
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

Joelle J Phillips
Attorney

615 214 6311
Fax 615 214 7406

VIA HAND DELIVERY

Hon Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re *Tariff to Reclassify Rate Grouping of Certain BellSouth Exchanges*
Docket No 04-00015

Dear Chairman Tate

Enclosed are the original and fourteen copies of BellSouth's *Response to Complaint of Consumer Advocate Division Regarding Regrouping*. Copies of the enclosed are being provided to counsel for the Consumer Advocate.

Cordially,

Joelle Phillips

JJP ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re *Tariff to Reclassify Rate Grouping of Certain BellSouth Exchanges*

Docket No 04-00015

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO COMPLAINT OF CONSUMER ADVOCATE DIVISION
REGARDING REGROUPING

BellSouth Telecommunications, Inc ("BellSouth") files this *Response* in opposition to the *Complaint* of the Consumer Advocate Division of the Attorney General's Office ("Consumer Advocate" or "CAD") regarding BellSouth's tariff on regrouping. BellSouth respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

I. THE CONSUMER ADVOCATE'S COMPLAINT PRESENTS A SOLELY LEGAL ISSUE.

While the Consumer Advocate seeks a contested case proceeding, there is no need to develop an evidentiary record of facts relating to this matter. The sole issue presented by the Consumer Advocate's *Complaint* is whether BellSouth's tariff constitutes a rate increase governed by the price regulation statute. The resolution of this issue requires only legal argument, and consequently, the Authority should not invest its finite resources in an evidentiary proceeding. The Consumer Advocate's *Complaint* articulates no specific matter regarding which it needs factual information in order to present its argument. Moreover, under T C A § 65-4-118(c), if the Consumer Advocate needed particular information, it is within the CAD's statutory power to request

that the TRA obtain such information from utilities. The Consumer Advocate has made no such request relating to BellSouth's tariff.

II. THE SOLE LEGAL ISSUE PRESENTED IN THIS MATTER IS WHETHER BELLSOUTH'S TARIFF CONSTITUTES A RATE INCREASE, AND THE ANSWER IS "NO."

A. The Tariff Does Not Alter Any Of The Rates In BellSouth's Approved Price Regulation Plan.

Conforming customers into their proper rate classification in accordance with the A3 tariff is not a rate increase. Nothing in the price regulation statute or plan even addresses the rate group concept generally, nor does it relate to BellSouth's revision of the tariff to provide internal consistency regarding the definition of these rate groups.

The tariff simply corrects rate groups, such that all locations meeting the rate group definitions, as set out in the tariff, are included in the correct rate groups. This correction is necessary because the A3 tariff defines rate groups based on the number of locations that can be dialed as a local call. Due to development in these areas during the substantial time since the tariff was established, this local calling ability has changed. As a result of those changes, some areas no longer fit within the rate group classification in which they were included at the time the tariff was established.

Rather than being analogous to a rate change, this situation is in fact analogous to the situation in which a customer physically moves from one location to another. If the customer's new location did not meet the definition of the former rate group, then the rate would be applied to that customer consistent with the new rate group to which he now belonged. Obviously, price regulation does not apply to such a situation, and no headroom would be required to make this change. Likewise, customers affected by the regrouping are customers whose geographic location no longer is consistent with the

rate group in which they were formerly included. In neither scenario has a rate increase occurred. Instead, facts have changed, and, as a result, a different (but current) rate should be applied to that customer in accordance with the A3 tariff.

B. Rates That Will Be Charged To Customers Under BellSouth's Revised Tariff Have Already Been Determined To Be Just And Affordable.

The CAD attempts to argue that BellSouth's tariff establishes a rate, which is not permitted under price regulation. BellSouth's tariff, however, provides that customers will be charged the applicable rate already established for rate groups in Tennessee. These rates were specifically determined to be just and affordable pursuant to both the Court of Appeals' decision and the TRA's approval of BellSouth's price regulation plan. Consequently, all customers who obtain service pursuant to the tariff will pay rates that have already been determined to be just and affordable under Tennessee law. The CAD's own *Petition*, at paragraph 13, recognizes this, noting that

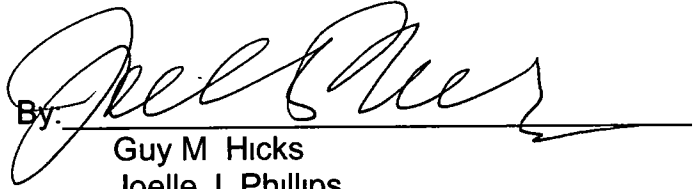
[u]tilizing the procedures outlined in this statute, the TRA established just, reasonable and affordable initial rates when the agency approved BellSouth's application for a price regulation plan. See *Price Regulation Order* at pp. 18, 20-22, see also, Tenn. Code Ann. §§ 65-5-209(a) and 65-5-209(c) (Supp. 2003) *BellSouth Telecomm. Inc. v. Greer*, 972 S.W.2d 663, 674-675 (Tenn. Ct. App. 1997).

III. CONCLUSION

For all the reasons cited above, the Authority should decline to convene a contested case in this instance, because the Consumer Advocate's *Complaint* raises solely legal arguments and demonstrates no need for the development of an evidentiary record. In addition, the Authority should reject the legal contentions of the Consumer Advocate because there is no statutory basis on which to conclude that the tariff constitutes a rate increase within the meaning of the price regulation statute.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M Hicks

Joelle J. Phillips

333 Commerce Street, Suite 2101

Nashville, TN 37201-3300

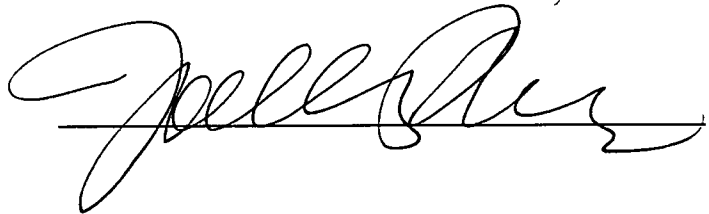
615/214-6301

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2004, a copy of the foregoing document was served on the following, via the method indicated

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Joe Shirley, Esquire
Office of Tennessee Attorney General
P O. Box 20207
Nashville, TN 37202

A handwritten signature in cursive script, appearing to read "Joe Shirley", is written over a horizontal line.